IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 42 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BABARBHAI PUNJABHAI KHRISTI - Applicant
Versus
STATE OF GUJARAT - Respondent

==========

Appearance :
MR KB PANCHOLI FOR DF AMIN for Applicant :
MR MA PATEL ADDL PP for Respondent:

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 01/08/2006

ORAL JUDGMENT

1. Heard learned Advocate Shri K.B.Pancholi for Shri D.F.Amin for the applicant and Shri M.A.Patel, learned Addl.P.P. for the respondent

– State.

2. The present application is preferred under Section 397 read with Section 401 of the Code of Criminal Procedure Code challenging the order of the Sessions Court, Nadiad dated 25.1.1995 passed in Criminal Appeal No. 38 of 1991, whereby, the Sessions Court rejected the Appeal of the applicant and confirmed the order passed by the learned J.M.F.C, Umreth on 26.11.1991 in Criminal Case No. 611 of 1986, whereunder, the present applicant – original accused No. 1 was convicted for the commission of offence under Section 326 and sentenced him to undergo RI for the period of 2 years and payment of fine of Rs.1000/- and in default thereof, further undergo SI for a period of 3 months. The accused No. 2 was though convicted for the commission of offence under Section 324 of the IPC, the sentence has been suspended and accused No. 3 was acquitted of the offences charged against him.

3. The case of the prosecution in short deserves to be set out as under :

3.1 On 13.11.1985, the complainant and his son – the injured witness and other family members were about to start their lunch. At that time, the younger brother of the complainant i.e. Accused No. 1 Babarbhai and the accused No. 3 Keshubhai Punjabhai had come to the residence of complainant for demanding the stitching charges

for trouser. At that time, the complainant's son and injured witness informed him that money would be given after he receives it from his father. The accused No. 1 and 3 started abusing the complainant and his son. It has stated that accused No. 1 uttered that the injured witness should be finished that day. Accused No.1 asked accused No. 2 Kamlaben to fetch the Dharia. The wife of accused No. 1 Kamlaben – accused No. 2 fetched the Dharia for accused No. 1 and accused No. 2 caught hold of the injured witness and accused No. 1 had inflicted Dharia blow. The blow landed on upper arm of the injured witness. At that time, other person like, son-in-law and daughter of the complainant etc., had also reached in the Varanda of the house where the offence had taken place and rescued the injured witness Jayantibhai. The complaint came to be registered at Umreth Police Station as I.CR. No. 178 of 1985. After due investigation and recording statements from the medical practitioners, the report was filed and the Criminal Case No. 611 of 1986 came to be registered. The accused were produced before the trial Court and chargesheet was drawn at Ex. 7 for commission of offences under Sections 326, 323, 504 and 114 of the IPC and under Section 135 of the Bombay Police Act. As the accused denied the charge and the trial commenced.

3.2 The prosecution examined the complainant at

Ex. 30. The complaint is produced at Ex. 31. The injured witness has been examined at Ex. 41, witness Pushpaben has been examined at Ex. 48, witness Kariyaben has been examined at Ex. 52, the panch witness has been examined at Ex. 53 and the panchnama is produced at Ex. 54. The recovery of the muddamal and recovery panch witnesses have been examined at Ex. 55 and 57 and the recovery panchnama is produced at Ex. 56. The Medical Officer – Dr. Harshadbhai Shantilal Mehta has been examined at Ex. 60 and his certificate is produced at Ex. 61. The Medical Officer of Nadiad Hospital Shri Niranjankumar Gohil has been examined at Ex. 64. The case paper and police yadi have been produced at Ex. 66 and 69 and medical case papers have been produced at Ex. 68, injury certificate is produced at Ex. 67, X-ray film is produced at Ex. 65. The I.O. has been examined at Ex. 75.

3.3 The Trial Court framed two points for determination namely;(i) whether the prosecution proves the commission of offence on the part of the accused under Section 326, 323, 504 read with Section 114 of the IPC and under Section 135 of the Bombay Police Act beyond doubt? (ii) What order? The first point is partly decided in affirmative and the second point is as per its order.

4. After discussing the evidence in detail, the trial Court came to the conclusion that the conviction deserves to be recorded in respect of present applicant – original accused No. 1 for commission of offence under Section 326 of the IPC and sentenced him to undergo RI for 2 years and fine of Rs.1000/- and in default of fine, further SI for 3 months; whereas, in respect of accused No. 3, the trial Court has acquitted him for the commission of offence under the aforesaid sections and the accused No. 2 has been held guilty for the commission of offence under Section 324 of the IPC, however, the sentence imposed upon accused No. 2 is suspended.

5. The order of trial Court dated 26.11.1991 was challenged in Criminal Appeal No. 38 of 1991 before the Sessions Court, Nadiad under Section 374(3) of the Code. The Appellate Court has discussed the material and rival submissions at length and, come to the conclusion that there was no error in the findings and judgment of the trial Court and therefore, confirmed the order of the trial Court and observed that the accused be given benefit of set off for the time he spent in custody. This order was pronounced on 25.1.1995. The same is impugned in the present Revision Application No. 42 of 1995, which the applicant has preferred under Section 397 of the Code.

6. This Court (Coram: J.M.Panchal, J.) issued Rule vide order dated 6.2.1995 and ordered the applicant to be released on bail in the sum of Rs.5000/- with one surety of the like amount.

7. Shri Pancholi, learned advocate for the applicant has vehemently contended that the trial Court has seriously erred in not appreciating the fact that the blood stain cloths of the injured have not been produced before the Court nor the prosecution has proved beyond doubt that the Dharia, which is produced, was the same Dharia, which was used for the commission of offence. Shri Pancholi has also submitted that the controversy appearing in the depositions of the eye witnesses ought to have been viewed by the trial Court in its proper perspective for giving at least the benefit of doubt to the accused. Shri Pancholi has submitted that for the small amount of Rs.5/-, the relation cannot be charged with serious offence. The story of the prosecution is not probable and therefore, on this ground also, the trial Court ought to have given the benefit of doubt to the accused and as the judgment of the trial Court is erroneous, the same ought to have been quashed and set aside by the Appellate Court also. Shri Pancholi has also submitted that in view of this matter, the judgment of the trial and Appellate Court deserve to be quashed

and set aside and the accused be acquitted of the charges levelled against him.

8. Shri Pancholi has submitted that the trial Court has misread and misconceived the oral and documentary evidence on record. Shri Pancholi has submitted that the trial Court has mainly examined the interested witnesses, therefore, the evidence of such witnesses should not have been relied by the trial Court for recording conviction. The trial Court has erred in holding that the prosecution has proved that injury caused by Dharia was sufficient to cause grievous hurt to the complainant. Shri Pancholi has submitted that the prosecution has failed to appreciate that the evidence of injured witness Jayantibhai was not reliable.

9. Shri Patel, learned Addl.P.P. has submitted that in Revision Application the concurrent findings of two courts below need not be disturbed unless and until it is patently suffer from such illegality and resulted into miscarriage of justice. Shri Patel has submitted that the injured witness has in unequivocal terms deposed that Dharia was inflicted by accused No. 1 and the Dharia was fetched by wife of the accused No. 1 – accused No. 2. In view of this, the conviction recorded deserves to be sustained and the punishment also deserves to be sustained. Shri Patel has submitted that there is no reason

for the injured witness to allow the real culprit to scot free and roped only the present applicant for such a serious offence. Shri Patel has submitted that in view of this, this court may not interfere with the findings of conviction and order of sentence passed by the trial Court and confirmed by the Appellate Court.

10. This Court has heard the learned counsels at length and perused the documents annexed with the application, the record of the original Criminal Case No. 611 of 1986 and Criminal Appeal No. 31 of 1991 and from the perusal of the record, following facts emerge :

(a) That the presence of the accused is established from the deposition of witness, complainant and the injured witness Jayantibhai.

(b)The injured witness has in unequivocal terms narrated the incident as it occurred and he has not faltered during the course of the cross-examination also.

(c.) The complainant has also given support to his complaint and during the cross-examination there is no deviation or contradictions worth noted.

(d) The medical evidence in form of injury certificate, the case papers, also go conclusive to show that the injury was caused with sharp edged weapon like Dharia.

(e) The recovery panchnama also seems to be proved.

(f) The injury caused was sufficient to be classified to be grievous hurt.

(g) The imputation is said to be result of gangrene but the injury in the first instance was itself sufficient to said to be a grievous hurt and therefore, looking to the gravity of commission of offence and sentence imposed, the same cannot be said to be disturbed.

11. In view of the aforesaid, this court is of the considered opinion that the judgment and order of the trial Court convicting the applicant for the offence under Section 326 of the IPC on 26.11.1991 and the order of the Appellate Court in Criminal Appeal No. 38 of 1991 passed on 25.1.1995 do not call for any interference in the present revision application and same are hereby confirmed and the present Revision Application deserves to be rejected and is accordingly rejected. The order of bail stands cancelled and the applicant accused No. 1 is hereby ordered to surrender to the custody for

serving his sentence. The order be communicated to the District Court for issuing appropriate orders for arresting the accused applicant and surrendered to the custody. Rule is discharged.

(S.R.BRAHMBHATT, J.)

pallav